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BHUTAN

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I. THE LAND AND PEOPLE

1. Bhutan is bordered to the north by the Tibetan Autonomous Region of China and by the Indian states of Sikkim, West Bengal, Assam and Arunachal Pradesh to the west, south and east. With an area of approximately 46,500 square kilometres, Bhutan has a north-south distance of 150 km and an east-west distance of 300 km. The terrain is among the most rugged and mountainous in the world, as much of the country lies within the Himalayas. The land rises from an elevation of about 100 metres above sea level in the south to more than 7,550 m above sea level in the north. Flat land is limited to a few relatively broad north-south running river valleys and small areas below the foothills, along the Indian border.

2. The country can be divided into three climatic zones. The Southern Belt, rising to 1,500 m has a hot, humid climate with temperatures between 15 and 30 degrees centigrade and annual rainfall ranging between 2,500 mm and 5,000 mm. The inner Himalayan Region, ranging from 1,500 to 3,000 m, has a temperate climate with an average annual precipitation of approximately 1,000 mm. The High Northern Region, ranging from 3,000 to 7,000 m, has a severe alpine climate with an annual precipitation of around 400 mm.

3. The history of Bhutan, as indicated by stone implements found in the country, shows that it was inhabited as early as 200-1500 B.C. However, information on the history of the country is documented only since the seventh century when two lhakhangs (monasteries) were built, namely the Kyichu Lhakhang in Paro valley and Jambay Lhakhang in Bumthang valley. This marked the advent of Buddhism in Bhutan. In the eighth century, Guru Rimpoche (Padmasambava, the Lotus born Precious Teacher) brought Tantric Buddhism to Bhutan.

4. Bhutan has been an independent nation throughout its history. However, it was not until the seventeenth century that the country was politically unified by Shabdrung Ngawang Namgyal (1594-1652 A.D.). He established a theocracy in 1652 and gave Bhutan an administrative system and a code of law. In 1907, the theocracy established by Shabdrung Ngawang Namgyal ended when the Trongsa Penlop, Ugyen Wangchuck (1862-1926) was elected as the first king of Bhutan by popular consensus. The establishment of the institution of hereditary monarchy in 1907 brought peace, stability and progress to the country.

5. As in all countries in the Himalayas, there is no distinct separation between the material and spiritual in the way people lead their lives. Buddhism has played a key role in the moulding of a distinct Bhutanese culture: art, drama, music and dance all have a religious foundation and are living manifestations of an ancient tradition. The aspiration towards enlightenment and the belief in the innate goodness of human beings are widely shared among Bhutanese. Buddhist precepts of compassion, tolerance and non-violence are integral to the Bhutanese way of life and although Bhutan is no longer a theocracy, monks still play an important role and have an honoured place in society.

6. The Lhotsampas (Southern Bhutanese of Nepali origin) are mainly Hindus who arrived in Bhutan during the first half of the twentieth century. Today they comprise nearly 25 per cent of

the country's population and enjoy equal opportunities and representation at all levels of society. Hinduism and Buddhism have the same roots and, therefore, share many similarities. The Vajrayana form of Mahayana Buddhism practised in Bhutan has all the major Hindu gods and goddesses in its pantheon of deities.

7. Most of the population is concentrated in the valleys while large areas at higher altitudes in the north of the country are virtually empty except for nomadic herders. Most Bhutanese still live in an extended family system or maintain strong links with their rural families. The average size of the household or family is estimated to be 5.6. The number of houses per village varies from 2 to 100 with an average of 43. Approximately 85 per cent of the population derive a living from agriculture and other traditional activities in the rural sector. The main city is the capital, Thimphu, with approximately 35,000 people. The other main urban settlements are Gelephu, Phuentsholing and Samdrupjongkhar, all of them in the south.

8. The pattern of economic activities in Bhutan has been largely determined by the country's self-imposed isolation and late decision to embark on planned development. Subsistence agriculture is supplemented by multiple utilization of forest areas, livestock rearing and by cottage industries based on traditional handicrafts. Widespread use of money only commenced during the 1960s with the expansion of trade with India and the inflow of development assistance. Since then the monetized sector has grown significantly in parallel with continued economic and social developments, improvements in transport and communication facilities and greater urbanization.

9. In formulating national goals and policies, emphasis is placed not just on material development but also on other less quantifiable goals, such as the spiritual and emotional well-being of the people and the preservation of Bhutan's cultural heritage and its rich and varied natural resources. During the period 1985-1995, the Bhutanese economy grew at the rate of 6.8 per cent per annum, doubling the real GDP to Nu 2,946 million from Nu 1,519.8 million. Efforts have been made to channel this economic growth towards ensuring universal access to basic health, education and essential services.

10. Besides the long-term constraints imposed by being landlocked, by having to cope with the extremely difficult topography and geological factors, and in moving from subsistence to an open modern economy in less than one generation, the short- to medium-term problems of managing development with a shortage of resources have still to be overcome. In this context, the Government continues to place top priority on human development and capacity building and the protection and preservation of the environment. Further advances in education and health services, increased involvement of women in development efforts as decision-makers and representatives of the people at the grass-roots level, increasing the effectiveness of the small civil service and enhanced capacity building through continued human resource development are all issues which receive top priority within government policy, with the over-arching goal of decentralization and active people's participation through all sectors of development, including the private sector.

II. GENERAL POLITICAL STRUCTURE

A. Monarchy

11. Till the beginning of the twentieth century, Bhutan was ruled by the dual system of administration known as Chhosi, established by Shabdrung Ngawang Namgyal in 1651. Under this system, Shabdrung Ngawang Namgyal founded the office of the Druk Desi (temporal ruler) to look after the temporal administration of the country and Je Khenpo (spiritual head) to look after religious affairs. This system of government prevailed for over two centuries. However, by the second half of the nineteenth century, the elective nature of the post of Druk Desi and frequent disputes over the instalment of the reincarnation of the Shabdrung brought internal strife and instability to the country. The desire of the people for political stability and internal peace therefore led to the establishment of a hereditary monarchy.

12. The year 1907 marked the beginning of a new era in the history of Bhutan. On 17 December of that year, the Monk Body, the State Councillors, the Chillahs (governors) of all the districts, and the representatives of the people met at Punakha and elected the Trongsa Penlop (Governor of Trongsa) Ugyen Wangchuck as the first hereditary King of Bhutan. With his outstanding qualities of leadership and statesmanship he was undoubtedly Bhutan's man of destiny. By uniting the country and establishing a central authority, he brought peace and stability to the country and laid the foundation for the emergence of modern Bhutan.

13. Since the establishment of the monarchy in 1907, there have been four hereditary kings. King Ugyen Wangchuck reigned from 1907 to 1926, King Jigme Wangchuck from 1926 to 1952 and King Jigme Dorji Wangchuck from 1952 to 1972. The present king, His Majesty King Jigme Singye Wangchuck, ascended the throne in 1972.

B. Organization of Government

14. The three main organs of government are the National Assembly, the Judiciary and the Council of Ministers.

1. National Assembly

15. The National Assembly is the legislative organ of the Government. It was established in 1953 by the third King, Jigme Dorji Wangchuck, who desired to develop political consciousness among his people and give them a greater say in the running of the country. The main functions of the National Assembly are to:

(a) Enact laws;

(b) Elect ministers; and

(c) Deliberate on all matters of national importance.

16. The National Assembly normally meets once a year but can be convened whenever necessary to discuss issues of national importance. It consists of 150 members.

comprising 105 elected representatives of the people, 10 representatives of the Monk Body, 29 nominated representatives of the Government and 6 elected ministers. All elected members serve for a term of three years while the elected ministers serve for a term of five years. The Speaker and the Deputy Speaker are elected by the National Assembly from amongst its members.

17. Till 1968, all legislative bills passed by the Assembly required the consent of the King before becoming law. In the 1968 autumn session, the King voluntarily relinquished his right of vetoing bills, thereby making the Assembly a sovereign body. No decisions of the Assembly require Royal assent before becoming operative. During its seventy-sixth session in 1998, the National Assembly was empowered by a Royal Edict to move a vote of confidence in the King.

2. Judiciary

18. The first set of codified laws was promulgated by Shabdrung Ngawang Namgyel in 1652 A.D. Later, the thirteenth temporal ruler Deb Choegyal Sherub Wangchuck (1744-1764) formulated a complete set of laws. The first King of the Wangchuck dynasty, His Majesty Ugyen Wangchuck, amended and improved these laws.

19. Many important laws were enacted during the reign of the third King, His Majesty Jigme Dorji Wangchuck. On his initiative, the first comprehensive codified laws were enacted by the National Assembly during several sessions in the 1950s. These laws, contained in the "General Law Book" (Thrimzhung Chhenpo) include almost all categories of criminal offences and their penalties. Other important laws enacted by the National Assembly during the third King's reign were the Nationality Law of Bhutan, 1958, The Forest Act, 1969, the Army Act, 1971, and the National Flag Act, 1972.

20. By far the largest number of laws were enacted by the National Assembly during the reign of the present King, His Majesty Jigme Singye Wangchuck. Most of these were enacted to respond effectively to the changing needs of a rapidly modernizing nation.

21. A proposal to enact new laws or revise existing ones can come from any quarter through the proper channel. Such a proposal may be submitted either directly to the National Assembly through its members or to the Council of Ministers through the respective line Ministry. In either case, a committee appointed by the receiving body submits its draft to the Council which then forwards it to the National Assembly members through the Secretariat to obtain the views of the people. The draft is thoroughly debated during the following session of the National Assembly before being formally enacted.

22. The supreme authority in all matters of law and justice in the kingdom is His Majesty the King. He is the final court of appeal with powers to commute sentences and grant pardon. The judiciary comprises the Thrimkhang Gongma (High Court), which has both appellate and a few original jurisdictions, the Dzongkhag Thrimkhang (District Court) and the Dungkhag Thrimkhang (Sub-District Court). The High Court consists of the Chief Justice and seven other judges. The thrimpons (judges) of the courts are assisted by Rabjams (assistant judges). The chimi (people's representative in the National Assembly), gup (village headman) and barmi

(negotiator/arbitrator who is well versed in the law) have some judicial functions, particularly with regard to effecting compromises between parties and thus saving them the expenses of going to court

23 The Royal Advisory Council also has a role to play in the dispensation of justice in Bhutan The Council reviews cases of litigants who are not satisfied with the decisions of the High Court and have appealed to the King The cases are then jointly reviewed by the High Court and the Royal Advisory Council

24 In the Bhutanese legal system, the accused in criminal cases are allowed to appoint jabmis (a legal representative/counsel well versed in law) for their defence The institution of jabmis has been gaining prominence over the past few years with the judiciary having conducted training for jabmis during the period 1995-1997 Today, there are 166 jabmis in Bhutan, several of whom have set up their own private legal practice

25 The codified and enacted laws of the National Assembly, referred to as the "General Law Book" separated the judiciary from the executive and legislative branches of government The process came to a final culmination when the High Court was established in 1968 Later, a separate judicial cadre as distinct from the civil service cadre was established to safeguard the independence of the judiciary Specific provisions have been made in the law to prevent the executive from interfering with the judiciary

26 The independence of judges has been ensured by giving them security of tenure (they can only be removed by the King, either on his own volition or on the recommendation of the National Assembly, for misconduct or incompetence) and by giving them adequate salaries and retirement benefits to put them beyond venal temptations

27 Certain principles of Western jurisprudence such as habeas corpus, and the "doctrine of precedent" have been adopted whenever they have been found relevant Precedent is not disregarded in toto because certainty and uniformity are the essential elements of justice, but on the basis of the "relaxed doctrine of precedent" it is not obligatory for judges to follow decisions of other courts in similar cases Judges in Bhutan, while giving weight to past decisions, have the freedom to take decisions which they consider just

28 In order to strengthen the judiciary in the kingdom, annual conferences of judges are held in Thimphu during which finer points of the law requiring clarification are discussed These annual meetings have also contributed to the modernization of the judicial system in terms of training, study tours and computerization of records Candidates have been sent abroad for legal training and degree courses in law Every effort is made by the High Court to ensure that justice is dispensed speedily and impartially by all the courts in the kingdom Justice in Bhutanese courts is substantive justice, which cannot be overshadowed by technicalities and external forms

3 Council of Ministers

29 Bhutan took a major step in the direction of a modernized administrative system in 1968 when the National Assembly, at the request of the King, approved the formation of a Council of

Ministers. The Council of Ministers, which is the executive organ of government, is an important decision-making body of the Government. It is also responsible for the running of the Government and implementation of all National Assembly resolutions.

30. During the seventy-sixth session of the National Assembly, held from 29 June to 30 July 1998, His Majesty the King introduced historic changes in the governance of the country. These changes were far-reaching and further deepened the process of democratization and people's participation initiated by His Majesty the King ever since he ascended the throne. In a royal edict issued to the National Assembly, His Majesty proposed that all cabinet ministers should henceforth be elected by the National Assembly and that the National Assembly should have a mechanism to register a vote of confidence in His Majesty the King. After much debate, the National Assembly approved the changes. In accordance with these changes, His Majesty the King no longer presides over the Council of Ministers, which has been vested with full executive powers. As a result, the Chairman of the Council is now the Head of Government. The Council of Ministers only has to keep the King fully informed on all matters that concern the security and sovereignty of the country.

31. In addition, the following bodies play important roles in the development of the country.

4. Royal Advisory Council

32. The Royal Advisory Council, which was established in 1965, consists of nine members, six representatives of the people, two representing the Monk Body and one nominee of the government. They hold office for three years except for the representatives of the Monk Body who hold office for one year.

33. The main functions of the body are:

To advise the King and the Council of Ministers on all matters of national importance;

To promote the welfare of the people and the national interests of the kingdom;

To develop friendly and harmonious relations between the Government and the people; and

To ensure that the laws and resolutions passed by the National Assembly are faithfully implemented by the Government and people.

5. Planning Commission

34. The Planning Commission, an independent body, was established in 1972. The broad functions of the Planning Commission are:

To direct and coordinate the formulation of all development plans;

To issue broad policy directives and determine development priorities;

To assess the resource base of the country and allocate resources,

To apprise from time to time the progress achieved and make recommendations to the National Assembly

35 His Majesty the King chaired the Planning Commission from 1972 to 1991. During these two decades Bhutan went through a sea of positive changes, making progress in every field. The economy grew at a fast pace and the standard of living in rural areas rose rapidly. An effective network of service facilities and infrastructure was established.

36 In 1991, His Majesty the King relinquished the chairmanship of the Planning Commission to decentralize the decision-making process. The Minister of the Planning Commission was appointed Chairman and the Commission was reconstituted to broaden the decision-making base. In August 1998, along with the changes mentioned above, the new Minister of Finance was appointed as Chairman of the Planning Commission.

37 A Technical Committee consisting of heads of departments and other technical personnel from various departments was created to assist the Planning Commission. The formation of the Technical Committee has brought professional expertise to facilitate in-depth discussions on development issues.

38 The mechanism for day-to-day linkage and consultation between the Secretariat of the Planning Commission and other ministries and agencies is provided by the Policy and Planning Divisions (PPDs) of the various ministries. The PPDs were established to formulate integrated policies and programmes for the line agencies and to act as the focal point for communication between the Planning Commission and other Ministries. The reconstitution of the Planning Commission and the creation of the Technical Committee and Policy and Planning Divisions were aimed at ensuring wider representation in the decision-making process in government.

6. District Development Committees (Dzongkhag Yargay Tshogchungs)

39 The King, His Majesty Jigme Singye Wangchuck, decentralized the administration and established District Development Committees (DYTs) in 1981 in all the 20 districts of the kingdom in order to bring about greater participation of the people in nation building activities. The King has repeatedly stressed that the future destiny of Bhutan lies in the hands of the people and whatever administrative system is established must receive the full and active cooperation and support of the people in order to become effective and lasting. The King has repeatedly exhorted the people to shoulder their responsibilities as loyal and dedicated citizens who are willing to place the interests of the nation before their own.

40 Today there are about 570 elected members in 20 DYTs. The DYT is chaired by the Dzongda (district administrator) and membership comprises all chimis (National Assembly members) of the district, gups (village headman) and members elected by the people in the village blocks to represent them in the DYT. The thrimpon (district judge) and the sectoral heads of the district and observers.

41. The DYT holds quarterly meetings but can also meet more frequently if required. It discusses development as well as policy matters. All points to be forwarded by the people of the district to the National Assembly are discussed and finalized by the DYT. Proposals for development activities for the benefit of the people during the Five Year Plans are also discussed and finalized by the DYT. The DYT ensures that development priorities requested by the local people are clearly reflected through decision-making during annual meetings and that plans are implemented effectively, with consistent follow-up evaluation ensuring that the people's requests and needs are met.

42. In order to enhance the capabilities of dzongkhag staff, gups and chimis, the Government, in partnership with several development partners, has provided training opportunities to further develop their skills. These training programmes target the enhancement of improved communication and community participation skills, as well as planning and monitoring and evaluation skills.

7. Block Development Committees (Geog Yargay Tshogchungs)

43. To promote further decentralization, Geog Yargay Tshogchungs (GYT) were instituted in every geog (block of villages) in 1991. The establishment of the GYTs was initiated by His Majesty to provide additional institutional bodies to enable the people at the grass-roots level to participate in decision-making and nation building.

44. Today there are 2,606 elected members in 202 GYTs. The GYT comprises members elected from among the people of the villages in the geog. Its strength is determined by the size and population of the geog. It is chaired by the gup (village headman) and the membership includes mangi-aps (village elders) and chipons (village coordinators). The local primary school head teacher functions as the secretary of the GYT, while the local development officials are observers. As he represents them at the national level, the chimi (National Assembly member) is only an observer. The GYT meets once in three months or as required.

45. The responsibility and powers of the GYT cover social and political functions, religious and cultural affairs, development planning and implementation, and safeguarding of the security and sovereignty of the nation.

46. As it is both impractical and inefficient for every household to work directly with the gup on a day-to-day basis, the mangi-aps and chipons represent the village and act on their behalf. Geog zomdus (block meetings/gatherings) are, however, called from time to time by the gup and these are attended by the representative of every household in the geog. Participation at these meetings is active and it has been estimated that there is 70 per cent female participation at the zomdus where the needs of the children are understood and addressed.

8. Royal Civil Service Commission

47. In order to set up an administration that is small, dynamic, dedicated and effective, and responsive not only to the needs of the people but also capable of meeting the challenges of development and nation building, the King established the Royal Civil Service Commission (RCSC) in 1982. It is responsible for formulating and ensuring implementation of

personnel policies in order to promote efficiency, loyalty and integrity among civil servants and to maintain a high level of morale. It is also responsible for appointments, transfers, promotions and discipline of all civil servants. It plays an important role in identifying and addressing emerging issues and changing needs of the civil service while at the same time promoting human resource development and skill transference through capacity building and training arranged both within and outside of the country. In addition, the RCSC is taking a proactive role in helping to identify and promote new vocational areas and sector services which have been identified as necessary to meet the emerging needs of the general public, as well as to address the forecasted supply of well-educated young people who will soon be needing gainful employment.

9. Monk Body (Dratsang)

48. An institution which does not form part of the political structure of the kingdom but has an important social and cultural role to play in the life of the nation is the Monk Body. Shabdrung Ngawang Namgyel (1594-1651 A.D.) established the first Monk Body. It is headed by His Holiness the Je Khenpo (spiritual head), who is equivalent in status to the King. He is assisted by four Lopons who are equivalent in rank to ministers. Although Buddhism is the State religion, there is complete religious freedom in Bhutan. However, open proselytization by any religion and criticisms of other religions are not permitted in the country, with a view to maintaining social harmony.

49. The monastic schools and Dratsangs have great influence on the society. People have faith in what the monks, lay practitioners and traditional healers say and do. Therefore, in order to take advantage of this channel to promote health, sanitation and nutrition among the people in Bhutan, a project has been under implementation for the last few years which aims at improving the drinking water supply, sanitation facilities and hygiene for the religious institutions. Monks have also received training in these areas and they are now actively involved in providing advice and guidance to the people.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

50. Bhutan is a developing country which initiated the process of planned development only in 1961 after centuries of self-imposed isolation from the outside world. Before 1961, there were no motorable roads, telephones, schools, hospitals, electricity, or other amenities of a modern State. Bhutan followed the policy of isolation in order to prevent its colonization by the colonial powers of the time, and while it was successful in preserving its cultural identity and political independence, it was left behind in the race for social and economic development. However, the laws of the land based on Buddhist principles have always proved conducive to the protection of human rights.

51. Human rights instruments are made part of the legal system when they are formally enacted by the National Assembly. The provisions of the various human rights instruments cannot be invoked before, or directly enforced by the courts unless they have been enacted by the National Assembly. However, as mentioned earlier, the Bhutanese judicial system has been

enriched by the adoption of many principles and procedures of Western jurisprudence, especially with regard to criminal justice. The system is still evolving to meet the challenges of the present and changing needs of a developing country.

52. A fundamental principle of Bhutanese law is that all persons, irrespective of status are equal before the law. The human rights of the people are protected by a three-tier judicial set-up consisting of the High Court, which has both appellate and original jurisdictions, and the District and the Sub-District Courts.

53. The gup, chimi and the barmi are competent authorities at the local level who have jurisdiction affecting human rights.

54. The aggrieved party, if dissatisfied with a verdict, can have the case forwarded from the local level up to the Thrimkhang Gongma. If still dissatisfied with the judgement of the Thrimkhang Gongma, the person can petition His Majesty the King, who then refers the case to the Royal Advisory Council for joint review with the High Court. The power to commute sentences and grant pardon in accordance with the law is vested in the King. Every Bhutanese citizen has this inalienable right of appealing to the King and, occasionally, has recourse to such a measure.

55. The judiciary was separated from the executive and legislative branches of government in 1968 when the High Court was established. Later, a special judicial cadre, distinct from the civil service cadre, was also established to safeguard the independence of the judiciary. Specific provisions have been made in the law to prevent the executive from interfering with the judiciary (section AH of the Thrimzhung Chhenpo).

56. While no specific institution may exist at the present moment for overseeing the implementation of human rights, the national machinery for such responsibilities are the National Assembly, the judiciary and the Royal Advisory Council. The Royal Civil Service Commission looks after the rights of the civil servants, while the Ministry of Health and Education is directly responsible for implementation of services and programmes which meet the needs and health/education rights of both adults and children. Various bodies like the Bhutan Chamber of Commerce and Industry, which helps and supports the private sector, and the National Women's Association of Bhutan, which helps improve the quality of life of women, augment the above institutions in the protection of human rights.

57. The Monk Body, as mentioned earlier, has a vital role to play in the social and cultural life of the nation and enjoys considerable respect and influence as the Bhutanese people are deeply religious. It plays an important part in the propagation of human rights, especially such rights as are a basic component of Buddhism.

58. The Government fully subscribes to the ideal of human rights and its cherished desire is to ensure the enjoyment of the full range of human rights by its people, including the basic human rights to food, clothing, shelter, education and health care. Gross National Happiness is the true essence of development in the Bhutanese context and, as such, the Government is fully

committed to ensuring the overall well-being of every individual. However, as Bhutan is a small developing country with limited resources, the Government realizes that the situation of human rights in the country is not perfect.

59. As a demonstration of her commitment to the promotion of human rights, Bhutan has invited a number of international human rights organizations to visit the country. These include the United Nations High Commissioner for Human Rights, the Working Group on Arbitrary Detention, the International Committee of the Red Cross (ICRC), and Amnesty International. The Royal Government has implemented most of the recommendations made by such missions, a point which was noted by the Working Group on Arbitrary Detention during its follow-up visit to Bhutan in May 1996.

60. Following the visit to Bhutan in July 1994 by Mr. José Ayala Lasso, the United Nations High Commissioner for Human Rights, the Centre for Human Rights (now renamed Office of the United Nations High Commissioner for Human Rights) and the Royal Government concluded a technical assistance project in 1996. Under this project, Bhutanese officials have received training on human rights reporting. Seminars and training have been held for High Court and district court judges, paralegals and law enforcement officials on human rights and the administration of justice.

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